

REMARKS

Favorable reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks. Claims 14, 17-20, 23, 24, 27-32, and 35-37 are pending in the subject application, with amended Claim 14 and newly added Claims 35-37 being in independent format. With this Amendment and Reply, applicants submit a petition for a three-month Extension of Time, with the requisite fee, to extend the due date of the response to the Office Action, mailed July 1, 2004, from October 1, 2004 to January 3, 2005.

Claims 15, 25, 26, 33, and 34 have been canceled. Claim 14 has been amended to recite a crop protection composition of active compounds having foliar or systemic action, comprising the active compounds biscarbamate, silicic acid, and ethoxylated tridecanol having 5 to 13 ethoxy units, wherein the composition is formulated as a water-based suspension concentrate. Support for this claim amendment can be found on page 3, paragraph 4 of the specification. Newly added independent Claims 35 and 36 are drawn to subject matter previously recited in Claims 25 and 26, respectively, and include all of the limitations of the base and intervening claims (Claims 14 and 24). Newly added independent Claim 37 is drawn to subject matter previously recited in amended Claim 34, and includes all of the limitations of base Claim 14.

It is urged that support for all the above amendments may be found throughout the specification as originally filed and that none of the amendments constitute new matter or give rise to prosecution history estoppel.

Claim Rejections – 35 U.S.C. §102(b)

Claims 14, 15, 17, 20, 23, 24, 27, and 33 are rejected under 35 U.S.C. §102(b) as being anticipated by *Murphy et al.* (U.S. Patent No. 5,658,851). This rejection is respectfully traversed, particularly in view of the above amendments and the following remarks.

The Examiner alleges that *Murphy et al.* teaches an aqueous agricultural dispersion composition comprising 0.1-2.5% aerosol (silicic acid), 1-50% tridecyl alcohol ethoxylate, and biscarbamates such as phenmedipham and desmedipham.

As noted above, Claim 14 has been amended to recite a crop protection composition of active compounds having foliar or systemic action, comprising the active compounds

biscarbamate, silicic acid, and ethoxylated tridecanol having 5 to 13 ethoxy units, wherein the composition is formulated as a water-based suspension concentrate.

Murphy et al. does **not** teach a crop protection composition of active compounds having foliar or systemic action, *formulated as a water-based suspension concentrate.* *Murphy et al.* teaches **oil-based** agricultural chemicals and, in particular, **emulsifiable concentrates** (col. 1, lines 8-9; col. 4, lines 1-3). Example 6 (col. 7) refers to “aqueous dispersions of agricultural oil compositions”. These aqueous dispersions contain oil formulations which are dispersed in water (col. 7, lines 23-31; Table 7). It is clear to one of ordinary skill in the art that the “aqueous dispersions” disclosed in *Murphy et al.* are in fact emulsions. Generally, an emulsion is a liquid system in which a first liquid is dispersed in a second liquid in which it is immiscible. The emulsions described by *Murphy et al.* are oil-in-water emulsions. A pesticide (e.g. herbicide) compound is dispersed or dissolved in the carrier oil (col. 3, lines 66-67; claim 10), which is then dispersed in water. Surfactants may be added, presumably, to stabilize the emulsion and to improve the “self-dispersibility” of the oil (Example 6).

In contrast, applicants’ invention teaches a crop protection composition of active compounds having foliar or systemic action that is formulated as a **water-based suspension concentrate**. The term “suspension”, as recited in amended Claim 14, refers to a liquid having solid particles dispersed therein. The suspension concentrates of applicants’ invention contain solid active substance-containing particles, which are dispersed in water. These particles are typically obtained by grinding the active substance (herbicide) in the presence of water, for instance, in a bead mill (*see* specification, p. 6, 2nd par.; and the Examples).

Murphy et al. therefore does not disclose each element of the claimed invention and does not anticipate amended Claim 14.

It is urged that Claims 14, 17, 20, 23, 24, and 27, are not anticipated by *Murphy et al.*, and that the present rejection of the claims under 35 U.S.C. §102(b) may thus be properly withdrawn.

Claim Rejections – 35 U.S.C. §103(a)

Claims 18, 19, and 28-32 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Murphy et al.* as applied to Claims 14, 15, 17, 20, 23, 24, 27, and 33. This rejection is respectfully traversed, particularly in view of the following remarks.

The Examiner states that *Murphy et al.* teaches all that is recited in Claims 18, 19, and 28-32 except for the composition comprising the instant specific area of the silica gel and 5-70% herbicide. The Examiner also states that *Murphy et al.* does not teach the composition having a particle size of 0.5-20 micrometers. The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the optimum surface area of the silica gel, the optimum amount of herbicide, and the optimum particle size of the composition and that one would have been motivated to do this in order to develop a composition that would have been most effective in protecting crops.

As discussed above, applicants respectfully submit that *Murphy et al.* neither teaches nor suggests the invention recited in amended Claim 14. Claims 18, 19, and 28-32 depend from Claim 14 and necessarily include each of the limitations of Claim 14.

As explained above, *Murphy et al.* fails to disclose an aqueous suspension concentrate. *Murphy et al.* teaches the use of a carrier oil in which the active substance (herbicide) is dissolved or dispersed. Dispersing this herbicide-containing carrier oil in water (as in Example 6) will always result in an oil-in-water emulsion as the carrier oil is immiscible in water. Therefore, the carrier oils described by *Murphy et al.* cannot be used for formulating the aqueous suspension concentrates as taught by applicants' invention.

Based on the teachings of *Murphy et al.*, one of ordinary skill in the art would not have been motivated to modify the emulsions described in *Murphy et al.* in order to obtain an aqueous suspension concentrate as presently claimed, as these two types of formulations (emulsions vs. suspensions) are fundamentally different. Also, the function of the surfactant described in *Murphy et al.* is specifically connected to the presence of a carrier oil. The surfactant provides "self-dispersibility", thereby increasing the spread diameter and spread area of the contained oil (Example 6, col. 7, lines 28-34, Table). Accordingly, Claim 14 cannot be obvious in view of *Murphy et al.*

It is urged that *Murphy et al.* would not render Claims 18, 19, and 28-32 obvious to one of skill in the art, and that the present rejection of the claims under 35 U.S.C. §103(a) may be properly withdrawn.

Claim Objections

Claims 25, 26, and 34 are objected to as being dependent upon a rejected base claim. Applicants note that the Examiner pointed out in the Office Action that *Murphy et al.* does not teach or suggest the instant composition comprising the instant wetting and dispersing agents and a mixture of metamitron and ethofumesate, and that Claims 25, 26, and 34 would be allowable if rewritten in independent form and including all of the limitations of the base and intervening claims.

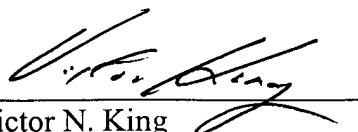
As noted above, Claims 25, 26, and 34 have been canceled and re-written as independent Claims 35-37.

It is urged that new Claims 35-37 are allowable, and that the present claim objections may be properly withdrawn.

Conclusion

In view of the above amendments and remarks, applicants believe that they have addressed all of Examiner's concerns. Early consideration and allowance of all the pending claims is respectfully requested.

Respectfully submitted,

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